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No Fee per Gov't Code §6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

HILL RHF HOUSING PARTNERS, L.P.; OLIVE RHF HOUSING PARTNER, L.P.,

Petitioners/Plaintiffs,

vs.

CITY OF LOS ANGELES *et al*,

Respondents/Defendants.

CASE NO.: BS170127

RESPONDENT CITY OF LOS ANGELES'S OPPOSITION TO MOTION TO COMPEL FURTHER RESPONSES TO RHF'S FORM INTERROGATORIES

Dept.: 86
Date: June 13, 2018
Time: 9:30 a.m.

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Petitioners filed a Motion to Compel further responses to Form Interrogatories. They raise two general complaints: (1) that the City objected to and did not provide information for many of the responses to Form Interrogatory 15.1; and (2) that the City referred to documents as the basis of its denials of allegations in the Petition and of Requested Admissions instead of providing "facts." They raise a number of other minor issues that boil down to Petitioners believing the City has more information to provide, but for those responses the City either has nothing further to say or provided answers to the wrong interrogatory (something that could have been cleared up had Petitioners done their duty and properly met and conferred with the City).

Petitioners are not entitled to any relief and should be sanctioned for bringing these unreasonable requests to the Court. Had Petitioners focused on our obligations during discovery (i.e., reasonably and in good faith attempting to develop the issues and evidence needed for trial), we would not be here. Instead, Petitioners made molehills out of nothing, made mountains out of those molehills, and then continued fighting long after those mountains should have tumbled to dust.

First, Petitioners make no showing that they seek discoverable material in this mandamus action. Discovery in mandamus is strictly limited because mandamus actions themselves are strictly limited. Trial is not a free-flowing consideration of any relevant evidence, but of the Administrative Record with exceptions that do not appear to apply here. Petitioners know that the City relies on nothing but the Record and so already know everything to which they are entitled.

Second, Petitioners conducted discovery in an odd way that created unreasonably repetitive discovery requests. They filed a Verified Petition with allegations the City was required to admit or deny in detail, and also filed Requested Admissions that repeated many of the allegations in the Verified Petition (often verbatim). The City did no object to this; however, Petitioners also propounded Interrogatory 15.1 (dealing with unadmitted allegations in the Verified Petition) and Interrogatory 17.1 (dealing with unadmitted RFAs addressing the exact same material). Because the RFAs and the Verified Petition addressed the same matters, Petitioners thus twice requested the same facts, witnesses, and documents through these interrogatories.

This was unduly and unreasonably burdensome and the City objected. Propounding the same discovery twice is unreasonably duplicative and unduly burdensome, and Petitioners appeared to drop

this issue during the meet and confer process. Until then nothing here seemed unusual. Repetitive requests often are made. During the meet and confer process the parties focus on and address the non-repetitive requests. But apparently Petitioners wish to get the same answers multiple time. This is not allowed. Petitioners' duplicative requests were objectionable and need not have been answered at all, and the City has no obligation to answer them let alone provide further information. The City acted properly here.

Otherwise Petitioners largely object because the City referred to documents rather than providing "facts" to support denials of RFAs and allegations in the Petition. It appears that the "facts" Petitioners seek is a summary of the documents on which the City relies. But when a summary of records is required the response can indeed merely refer to the documents themselves, as did the City.

But even if Petitioners had a sensible substantive position, Petitioners never made any attempt to compromise or explain their concerns. During meet and confer Petitioners argued that the City needed to provide "facts" and not just refer to documents. The City repeatedly asked Petitioners what sort of "facts" they were seeking, given that the Requests themselves largely or only refer to the contents of documents. The failure to provide any guidance or to compromise in any way during the meet and confer process negates Petitioners' attempts to compel further responses now.

I. FAILURE TO MEET AND CONFER.

Petitioners failed to make a reasonable attempt to meet and confer on these Requests. Under Section 2016.040, a party must show "a reasonable and good faith attempt at an informal resolution of each issue presented by the motion." "A reasonable and good faith attempt at informal resolution entails something more than bickering with deponent's counsel at a deposition. Rather, the law requires that counsel attempt to talk the matter over, compare their views, consult, and deliberate." (*Townsend v. Superior Court* (1998) 61 Cal. App. 4th 1431, 1437.) Reasonable and good faith attempts require the consideration of alternative methods to resolve discovery disputes and consider the suggestions made by their opponents. (*See Obregon v. Superior Court* (1998) 67 Cal. App. 4th 424, 430-432.)

Petitioners failed to meet the bare minimum and identify their concerns about specific requests, let alone make some effort to find common ground. Petitioners cited to sweeping principles without ever addressing the City's specific concerns and made vague demands for "answers" that were

"responsive," without any effort to explain what that meant. Petitioners did not meet and confer in good faith. Their Motion to Compel should be denied, and sanctions imposed.

A. FORM INTERROGATORIES 15.1.

The City objected to Interrogatory 15.1 as duplicative, and Petitioners appeared to concede the City need not answer the duplicative requests. In their March 20 Meet and Confer letter Petitioners state:

> We continue to take issue with the City's responses to Form Interrogatories 17.1 and 15.1. The issues remain the same – the City does not provide facts to support its responses and the City cannot simply refer to all of the documents to avoid specifying what fact/documents it relies on in its responses. For further discussion, I respectfully refer you to my letter dated March 6, 2018.

(Exhibit L, p. 2.) This seems to say that Petitioners were not seeking responses to these duplicate requests. Petitioners do not address duplication or unanswered Interrogatories at all. Instead, the "issues" are referring to documents and not "specifying" documents. Any fair reading of this course of conduct would find that Petitioners either failed to meet and confer on this issue, or waived any right to compel further answers to duplicative requests in Interrogatory 15.1 by conceding it.

B. PETITIONERS NEVER EXPLAINED ANY CONCERNS OR MADE ANY ATTEMPT TO COMPROMISE REGARDING THE CITY'S REFERENCE TO DOCUMENTS.

Petitioners now seek a "summary" of responsive documents in response to these interrogatories. But Petitioners never asked for a "summary" of responsive documents during the meet and confer process and cannot seek such relief now. Instead, Petitioners initially asked that the City "please supplement the City's responses to Form Interrogatory No. 17.1 to contain facts and/or documents in support of the City's denials, as the documents set forth in Attachment 1 to RHF's Requests for Admissions do not suffice." (Exhibit G, March 6 letter, p. 4.) Otherwise, Petitioners said only, "[p]lease also note that it is RHF's position that the City's reference to the documents set forth in Attachment 1 to RHF's Request for Admission is insufficient as a discovery response because the documents on their own do not support the City's contentions." Thus, Petitioners contended that the

City needed to provide something **more** than only referring to or summarizing documents; the documents "on their own" purportedly did not suffice.

The City repeatedly offered to supplement its responses if Petitioners could explain what missing "facts" they sought. The City asked if Petitioners were seeking something along the lines of "The City Denies . . ." or quotes or summaries, and was told no. As stated by the City:

> We are still flummoxed by your demand for "facts" in support of the City's responses. The City, at this point, has only and intends only to rely on the documents and witnesses (the City does not believe any witnesses will be used, but awaits trial to know for sure) referenced. The City has nothing else to provide in response to these requests. It disagrees with RHF's case as noted, and will rely on the evidence noted to support that disagreement. There are no "facts" out there to the City's knowledge other than what was referenced. Discovery is complete.

(Exhibit I, p. 5.) Nor did Petitioners seek a "summary" in their later correspondence, but instead pointed to the "facts" demanded in the March 6 letter. (Exhibit L, p.3.). The City asked again for clarification:

> I asked for an example of what sort of "fact" would be responsive to, say, Admission 42, which asks the City to admit that "the Engineer's Report does not provide a benefit analysis of the management services." You said you did not want "the Engineer's Report does provide a benefit analysis of the management services," as we agreed that was implicit in the City's denial. Nor did you want quotes from the Engineer's Report (which provide nothing other than a response of "read the document, it's in there," which the City's response already says). Instead, you said you wanted what "the Code" requires without any further clarification.

(Exhibit M, Meet and Confer letter, p. 3.) Petitioners provided nothing, specifically never asking for a "summary" of any documents. Petitioners now take the position that the Court must "require the City to make reference to a document such as the Engineer's Report or Management District Plan, and then summarize the relevant portion so the answer is fully responsive to the request." (Opposition at p. 9.)

Moreover, the City offered to amend its responses with more specificity, but Petitioners did not want the City to do so. The City pointed out that it did, indeed, "specify" documents by referring to only 11 or so documents in its responses. The City also pointed out that many of the Requests were general and required the City to review the entire record, including documents that Petitioners

contended were relevant to this litigation. The City further pointed out that many Requests specifically referenced a single document, and so nothing was gained by the City amending its responses to also name that document. Petitioners appeared to drop this issue, as it provided nothing of value to anyone.

Likewise, Petitioners never even hinted that the City could not rely on Section 2030.230 because the City "failed to reference Section 2030.230." None of Petitioners' correspondence even mentions "referencing Section 2030.230," nor did they raise the issue orally. Had they raised it, the City would have offered to amend its responses to make that explicit, but that seems remarkably pointless since all parties (and the Court) know very well the City was relying on Section 2030.230 regardless of any "reference" or lack thereof.

Under any reasonable view of these discussions Petitioners either waived these concerns by failing to raise them altogether, or failed to properly meet and confer by failing to make a reasonable attempt to discuss, review, and compromise on these issues. The Court should not reward this conduct. The Motion to Compel should be denied.

II. THIS MOTION SHOULD BE DENIED BECAUSE THE DISCOVERY IS IMPROPER.

A. PETITIONERS' DISCOVERY IS PROHIBITED IN THIS MANDAMUS CASE.

Petitioners' lengthy and broad discovery is not allowed in mandamus matters. Unlike other litigation, in which facts and issues are unsettled and must be clarified before trial, mandamus is largely if not completely resolved by the Administrative Record. Because there is little reason to narrow issues or discover evidence when such issues are already strictly limited by the nature of mandamus actions, discovery likewise is strictly limited.

Writs such as this are self-contained and require little further development because the Administrative Record (and the issues therein) limits the evidence before the Court. When considering a Business Improvement District, the parties are limited to the Administrative Record and "extra-record evidence [that was] improperly excluded by the public agency or could not have been produced through the exercise of reasonable diligence at the time of the hearing." (*Town of Tiburon v. Bonander*

(2009) 180 Cal. App. 4th 1057, 1076). Thus, the general restrictions on discovery in Writ matters apply.

And these general rules are restrictive. As stated in *Fairfield v. Superior Court of Solano County* (1975) 14 Cal. 3d 768, 772:

> [E]vidence additional to the administrative record can be introduced only if that evidence could not with reasonable diligence have been presented at the administrative hearing, or was improperly excluded at that hearing. This limitation on the admission of post-administrative evidence works a corresponding limitation on post-administrative discovery, **restricting inquiries to those reasonably calculated to lead to the discovery of additional evidence admissible under the terms of section 1094.5**.

(*Addressing* a Writ of Mandamus under Code of Civil Procedure 1094.5 and applying the same evidentiary stand as applies to writs challenging a Business Improvement District). Moreover, "posthearing discovery may reasonably be limited to inquiries calculated to yield evidence which through no fault of the offeror does not appear in the administrative record." (*Fairfield*, at FN 6.) Thus, discovery to "narrow issues" or "eliminate sham pleadings" are not allowed; indeed, "narrowing issues" or "eliminating sham pleadings" is rarely even a concern, as the issues are raised during the administrative review process. Instead, inquiries must be reasonably directed to evidence that meets the *Tiburon* standard.[1] Petitioners argue that, despite *Fairfield's* clear direction that discovery is limited to finding extra-record material, they are entitled to broad and sweeping discovery to "narrow issues at trial." *Fairfield* explicitly limits discovery to admissible extra-record evidence, and such matters are not discoverable, and Petitioners present no good reason to go beyond *Fairfield*'s holding.

But even if *Fairfield* allowed such discovery, "narrowing issues at trial" does not justify Interrogatories seeking "facts," "witnesses," and "documents." Such discovery seeks not to narrow issues but to gather evidence. Petitioners sent out 200 Interrogatories addressing minutia such as

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[1] As *Fairfield* holds, the issues themselves, like the evidence for trial, generally are limited to what was considered during the administrative review process and thus discovery is not reasonable. (*See, e.g., Degener v. Governing Board*, 67 Cal. App. 3d 689, 697 (1977).) Thus, *Fairfield* limits discovery to additional extrinsic evidence that can be introduced in mandamus, period, with no allowance for "narrowing issues" as issues cannot generally be "narrowed" or "expanded."

specific quotes from the Administrative Record or the specific legal authority cited to in the Record. To the extent any issues are "narrowed," the RFAs themselves, not these interrogatories, narrowed the issues. These interrogatories seek exactly the discovery *Fairfield* prohibits.

Moreover, if (as petitioners believe) such discovery "narrows issues" *Fairfield* would mean nothing at all. Rather than seeking evidence through interrogatories a party would simply argue they are "narrowing issues" and seek discovery about every finding in the Record (as do Petitioners.) No fair reading of these requests shows any attempt to "narrow issues," but instead to locate "facts."

Nor do Petitioners appear to correctly apply *Outfitter Properties, LLC v. Wildlife Conservation Bd.* (2012) 207 Cal. App. 4th 237, 255. That case says nothing whatsoever regarding discovery in mandamus, instead addressing the admissibility of evidence. It is completely irrelevant to Petitioners' argument that they may seek discovery to "narrow issues at trial," and says nothing about their ability to seek discovery of evidence. In any event, *Outfitter Properties* holds:

> Although extra-record evidence is not admissible to contradict evidence upon which the administrative agency relied in making its quasi-legislative decision, or to raise a question regarding the wisdom of that decision it may be admissible to provide background information regarding the quasi-legislative agency decision, to establish whether the agency fulfilled its duties in making the decision, or to assist the trial court in understanding the agency's decision."

(*Outfitter Properties* at 251.) Thus, if *Tiburon* does not completely resolve the admissibility of extra-record question, *Outfitter Properties* also prohibits the broad introduction of evidence for which Petitioners argue. It allows only evidence that does not contradict evidence in the Record, or that does not challenge the administrative decision. And again, Petitioners do not seek such evidence.

Thus, Petitioners' interrogatories are solely aimed at irrelevant matters. Much of Petitioners' discovery addresses the Record itself and challenging the City's reasons for acting on it. Petitioners seek discovery regarding, for instance, whether the "Engineer's Report does not provide solid, credible evidence in determining its proffered Relative Benefit Factors." (*See* Requested Admission 69.) Petitioners essentially ask whether the Record fails to justify the City's decision. These are precisely the extra-record matters excluded from evidence by *Outfitter Properties*, and *Tiburon.*

Because Petitioners' Requests do not seek to discover anything that can be discovered in a mandamus, the City's objections are well-founded, and Petitioners' Motion should be denied. But if

the City should be ordered to provide any further responses, such responses should be limited to only whether or not the City is aware of any such evidence that satisfies the *Tiburon* standard. That is all the discovery that *Fairfield* allows. The City contends that such further responses are moot; the City already responded that the only responsive information it has is the Administrative Record. Thus, the City has already provided Petitioners with all the response to which they are entitled, even under a massively expansive reading of *Fairfield.*

Therefore, there is nothing here for the Court to compel. Petitioners are entitled to know whether the City is aware of any relevant extra-record evidence (and if so, what it is). The City has answered in the negative, for the matters addresses in these requests. Therefore, there is nothing further for the City to provide, and nothing further for the Court to order.

B. PETITIONERS IMPROPERLY SEEK DISCOVERY REGARDING THE CONTENTS OF DOCUMENTS.

Generally parties cannot obtain discovery regarding the contents of documents because such discovery is irrelevant, duplicative, and/or unduly burdensome. (*See, e.g., Vons Cos. v. United States,* 51 Fed. Cl. 1, 14 (Fed. Cl. November 6, 2001). In *Vons*, the plaintiff sought to force the United States to admit to the contents of various documents. *Vons* discussed the issue:

> These requests, scattered among plaintiff's two sets of admissions requests, seek to confirm selected text from documents that defendant has already admitted are genuine in responding to plaintiff's first set of requests for admission. In the court's view, once the genuineness of entire documents has been established, there is no additional benefit to be derived from confirming specific portions thereof. Requests of this nature are manifestly "unreasonably cumulative" and "duplicative" under RCFC 26(b)(1). *See Van Wagenen v. Consolidated Rail Corp.*, 170 F.R.D. 86, 87 (N.D.N.Y. 1997) (denying motion to compel answers to requests for admission seeking to confirm genuineness of quotes from documents whose authenticity had already been admitted). See also *Caruso v. Coleman Co.*, 1995 U.S. Dist. LEXIS 6638, 1995 WL 347003 (E.D. Pa. 1995) (striking request for admission as to whether or not a particular witness testified to certain information at a deposition as duplicative of the deposition itself). But see *S.A. Healy Co.*, 37 Fed. Cl. at 205 (permitting admission requests that establish that a "contract says what it says").

Vons at 14 (*Citations as original.*)[2]

Such discovery is even more wasteful in California courts, as "a party is entitled to amend responses to requests for admissions pursuant to Code of Civil Procedure section 473 'where justice so requires.'" (*Jahn v. Brickey*, 168 Cal. App. 3d 399, 214 Cal. Rptr. 119, 1985 Cal. App. LEXIS 2103 (1985).) Justice would almost invariably require amended responses if they are contradicted by authenticated documents. If a party admitted that sales records reflected that a truck cost $10,000, but the sales documents showed it cost $1,000, it would be a miscarriage of justice to hold a party to the incorrect admission. Thus, such discovery rarely can help assist in trial preparation.

Petitioners cite to *Deyo v. Kilbourne* (1978) 84 Cal. App. 3d 771, 778, for the proposition that discovery can be directed to the contents of documents. *Deyo* says nothing like what Petitioners believe. Instead, it relies on a Florida case, *State Road Dep't v. Florida E. C. R. Co.* (1959) 212 So. 2d 315, that properly held that an answer to a request seeking general information cannot refer to affidavits purportedly containing the answer. It says nothing at all regarding whether discovery requests can be directed to the contents of documents.

Thus, *Deyo* stands only for the unremarkable proposition that if a party asks for all information regarding a traffic accident, **the response** cannot simply refer to an accident report or to a deposition transcript but must actually provide that information. This says nothing about an objection to a **request** solely addressing the contents of an accident report, an entirely different matter. Instead, Petitioners concededly ask questions specifically, and only, about the contents of documents – the administrative record. Such requests are unduly burdensome and unlikely to lead to useful information, as held in *Vons*.

And Petitioners' requests are objectionable. For instance, Petitioners ask the City to admit "that the Notice of Public Hearing included a summary of the Management District Plan, an assessment ballot, and a summary of the procedures for completion, return, and tabulation of the

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[2] *Healy* did not address objections based on duplicative or burdensome requests, but an unrelated objection that discovery regarding contract terms was "a pure question of law" and so not a proper subject for discovery. *S.A. Healy Company/Lodigiani USA v. United States*, 37 Fed. Cl. 204, 205 (Ct. Cl. 1997.) *Healy* never addressed the argument the City makes and *Vons* addresses, i.e., that such requests are duplicative, burdensome, and unlikely to lead to discoverable material.

assessment ballots." (Request for Admission 29.) The City admitted to the authenticity of the Notice of Public Hearing on answer. What was included in the Notice of Public Hearing is clear from its contents. This request adds nothing to what is known simply by reviewing the document itself. Ten other Requests also pointlessly ask the City to admit to quotes from the Report. (*See* Requests 32, 34, 49, 50, 66, 67, 70, 72, 75 and 79.)

Another 40 or so Requests ask the City to admit to characterizations of documents, but **without** quoting the document itself. Request 54, for example, asks the City to "[a]dmit that the Engineer's Report does not distinguish between the benefits conferred on residential and mixed-use residential properties and the benefits conferred on commercial properties." While technically not quoting the Report, the Request has exactly the same effect. Thus, the City is asked to admit to language from documents with a few key words changed, or combine different parts of documents together, or combine parts of different documents. This is pointless. The documents either distinguish "between the benefits conferred on residential and mixed-use residential properties and the benefits conferred on commercial properties," or do not. Regardless of how the City responds, the document itself will answer that question at trial.

Thus, even if Petitioners did not seek mandamus (and so could theoretically obtain such discovery), these Requests cannot gather any new evidence and cannot narrow any issues at trial. A few Interrogatories appear to address matters outside of the Record, but the City has no further information to provide, as was made abundantly clear to Petitioners.

Therefore, the City's objections are well-founded and the Motion should be denied. The City has no obligation to provide "facts" about the contents of documents, as the documents themselves are the only "fact" at issue. There is nothing further to compel.

III. THE CITY ANSWERED FORM INTERROGATORIES 15.1 AS REQUIRED.

A. INTERROGATORY 15.1 IS LARGELY DUPLICATIVE OR IMPROPER.

Petitioners chose to file a Verified Complaint with over 100 allegations, and then chose to propound 82 RFAs repeating, often verbatim, the allegations in the Verified Complaint. Petitioners then propounded Form Interrogatory 15.1 (addressing unadmitted allegations in the Petition) **and at the same time** propounded a largely duplicative Form Interrogatory 17.1 (addressing unadmitted

Requests for Admission). The City, it thought reasonably, responded to Interrogatory 17.1 (which addressed the Requested Admissions) and did not respond to the duplicative responses in Interrogatory 15.1 (which asked for exactly the same information as already provided). The City was willing to meet Petitioners half way, and did not quibble over the extent to with Interrogatory 17.1 itself was unduly and unreasonably repetitive.

The very first Requested Admission requests that the City "[a]dmit that Defendant/Respondent the City of Los Angeles ("the City") is subject to the law of the State of California, including the Constitution of the State of California and the California Streets and Highways Code." That is virtually identical to Allegation 4 in the Petition, which alleges that "the City is a public agency required to comply with the applicable provisions of the law of the State of California, including the Constitution of the State of California and the Streets and Highways Code."

This repetition repetitiously repeats throughout. Requested Admission 79, for example, asks the City to admit "that the Engineer Report provides: 'In the case of the Downtown Center PBID, the public at large are those people that are within the PBID boundary that do not pay an assessment and do not specially benefit from the PBID activities.'" Compare this to the virtually identical Allegation 27(h)(3): "[T]he public at large, which the Engineer's Report defines in DCBID's case as 'those people that are within the PBID boundary that do not pay an assessment and do not specially benefit from the PBID activities.'"

Moreover, dozens of allegations merely refer to other allegations or set forth boilerplate "pleading" formalities, such as the Doe allegations in Paragraph 7. The City cannot imagine how the City's discovery responses here are relevant to anyone.

The City has no obligation to respond to these requests. Duplicative requests cannot lead to discoverable information because that information has already been provided. Any information relating to Allegation 4 of the Petition, for example, would also be provided in response to Requested Admission One (in Interrogatory 17.1). These duplicate requests serve no purpose and so are improper, and the City need not provide any further response to the duplicative matters in Interrogatory 15.1. Nor is there any point to the self-referencing and boilerplate allegations. No further responses should be ordered.

B. THE CITY PROPERLY ANSWERED THE NON-DUPLICATIVE ASPECTS OF INTERROGATORY 15.1

Petitioners object to the information the City actually provided for a number of non-duplicative allegations. For example, Paragraph 46 of the Petition alleges that Petitioners are entitled to attorneys fees, something not addressed in the RFAs. In response to Interrogatory 15.1, the City provided the following fact: "Plaintiff fails to satisfy the requirements for attorneys fees under Section 1021.5." The City cited to the documents in the Record as supporting its position. Petitioners inexplicably contend that the City must provide more "facts" here.

The City's response was entirely proper. The City relies only on the "fact" that Petitioners fail to satisfy the requirements for attorneys fees under Section 1021.5. The City has no other "facts" to provide. More to the point, neither do Petitioners, as Petitioners have no evidence that they are entitled to attorneys fees. If Petitioners had to file a motion for attorneys fees right now, they would lose.

IV. THE CITY PROPERLY ANSWERED INTERROGATORY 17.1.

Petitioners make two complaints regarding the City's answers to Interrogatory 17.1. First, Petitioners argue that the City failed to provide "facts" in support of its denials of Requests for Admissions. Second, Petitioners argue that the City also did not properly "identify" documents that support these Requests. The record shows that the City substantially complied with its obligations under the Code and no further responses are needed.

A. THE CITY PROPERLY IDENTIFIED RESPONSIVE DOCUMENTS.

The second complaint is easily addressed. The City did specify responsive documents. It specified 11 documents as containing the facts on which the City relied in denying the RFAs. This is not "a mass of documents" as Petitioners argue, but only a few of the documents in the Record. Most of the documents cross-reference each other and so provide context that is needed to understand the entire issue. It would be difficult if not impossible to answer a question about the Engineer's Report without at least reviewing the Management Plan and related documents to allow for contradictions and clarifications from the Record. To the extent only part, not all, of the Record is relevant to a request, the City no more nor less than Petitioners can locate and identify such records from the 11 specified

(generally the Engineer's Report). Given the nature of this case, the City's response substantially complied with the Code.

In any event, Petitioners never asked for further clarification. Instead, Petitioners questioned only the lack of "facts" in these responses. This issue was waived. The Court should not order the City to amend its references to documents.

B. THE CITY PROVIDED ALL RESPONSIVE "FACTS."

Now that Petitioners have finally decided that the missing "facts" in the City's responses were "summaries" of responsive documents, Petitioners' concerns are easily addressed. When reference to a document fully answers an interrogatory, the respondent need only refer to the document (as did the City). As Petitioners' authority, *Deyo*, clearly says:

> When in order to answer an interrogatory, it is necessary to make a compilation, abstract, audit, or summary of business records of a party, and such compilation, abstract, audit, or summary does not exist or is not under the control of the party, it is a sufficient answer to so state and to specify the records from which the answer may be derived or ascertained and to afford the other party reasonable opportunity to examine, audit, or inspect such records and to make copies thereof, abstracts, or summaries therefrom. (Code Civ. Proc., § 2030, subd. (d).)

(*Deyo* at 784; *addressing* former Section 2030.) Petitioners **literally** ask the Court to order the City to summarize the documents. Having provided the responsive documents, no further response is needed.

Petitioners argue that the City did not specifically refer to Section 2030.230; however, discovery requires substantial compliance, not absolute compliance. (*See, e.g.*, *St. Mary v. Superior Court*, 223 Cal. App. 4th 762, 778 (2014).) The City's response at a minimum substantially complied with Section 2030.230. Moreover, Petitioners utterly failed to raise this during the meet and confer process. They cannot rely on it here.

In any event, the only further response required by the Code would be to: (1) refer to Section 2030.230; and (2) state that no summary exists. The City could provide such responses, but they would be moot. Petitioners already know (and have known throughout the meet and confer process) that the City referred to documents pursuant to Section 2030.230, and explicitly ask for a summary. Thus, there is no doubt that the City's response: (1) would be a summary; and (2) is being answered by

referring to documents. Such an order would be moot, as Petitioners already know the information they now seek.

Petitioners' failure to meet and confer in good faith underlies all of its technical concerns. Petitioners never said they needed or wanted a "summary" of responsive documents or a precise invocation of Section 2030.030. If they had, the City could have made those minor technical changes to its responses or convinced Petitioners this was pointless. Even if the City had not substantially complied with the Code, Petitioners should not be rewarded for hiding the ball during the meet and confer process and now demanding something never demanded.

V. THE CITY IS ENTITLED TO SANCTIONS.

Petitioners' are being unreasonable and should be sanctioned. As shown above, Petitioners were not entitled to any of the discovery they seek, and had no substantial justification for thinking otherwise. The City incurred $12,812.50 in attorneys fees contesting this Motion to Compel, and is entitled to compensation. (Declaration of Daniel M. Whitley at ¶ 12).

Throughout the meet and confer Petitioners continued to seek "facts," now known to be "summaries" of the responsive documents. The plain language of the Code does not require "summaries," nor does the **only** case on which Petitioners rely (*Deyo, supra*). Petitioners have no reason to think this was an appropriate demand. Second, Petitioners here demand responses to clearly duplicitous requests. There is no justification for this, substantial or otherwise. Third, Petitioners throughout this process refused to recognize that this is a mandamus action with limited discovery, needlessly creating a dispute where nothing could be gained. There is no substantial justification for these positions.

Finally, Petitioners refused to meet and confer in good faith. Petitioners should at a minimum have recognized that the nature of a mandamus actin limits discovery and conducted meet and confer accordingly. At a minimum Petitioners should have reined in their hundreds of requests and focused on the important and contentious issues. Instead, they treated this as any other case and refused to even discuss limiting discovery as required. Nor did they begin to address the dozens of clearly pointless requests during the meet and confer process, instead explicitly demanding responses to pointless and duplicative requests. And finally, here in their Motion to Compel change their position

dramatically, explicitly seeking "summaries" of documents after explicitly denying they wanted such earlier. Regardless of whether Petitioners have any substantial justification for their current positions, their failure to make any reasonable attempt to compromise and resolve these disputes justifies sanctions.

Should the Court decide that Petitioners' conduct in general is not sanctionable, the City urges the Court to focus on Petitioners' conduct with respect to Special Interrogatories 15.1. Here, Petitioners: (1) sought clearly duplicative information; (2) never discussed the extent of duplication during the meet and confer process; (3) never made any attempt to minimize or avoid duplication and, indeed, seemed to drop these requests; and (4) now move to compel clearly duplicative answers. Petitioners argue only that the City's other responses were inadequate; however, this is not reasonable justification to propound duplicative discovery. No reasonable person asks the same question twice hoping for a different answer. Instead, a remedy (a motion to compel) is provided specifically to address such circumstances. Petitioners are being entirely unreasonable here. Moreover, Petitioners here seek "further responses" to clearly irrelevant requests, such as boilerplate allegations simply stating that the Verified Petition repeats earlier allegations. No reasonable person would seek "further responses" to such matters and Petitioners fail to provide any justification for this.

At a minimum the Court should impose sanctions to compensate the City for its costs in contesting that portion of the Motion to Compel addressing duplicative requests in the Special Interrogatories. The City incurred attorneys fees of $5,468.75 contesting these duplicative requests.

Dated: May 30, 2018

Respectfully submitted,

MICHAEL N. FEUER, City Attorney (SBN 111529)
BEVERLY A. COOK, Assistant City Attorney (SBN 68312)
DANIEL M. WHITLEY, Deputy City Attorney (SBN 175146)

By _____
DANIEL M. WHITLEY
Attorneys for the City of Los Angeles

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PROOF OF SERVICE

I, Cynthia Marchena, declare as follows: I am employed in the County of Los Angeles, California. I am over the age of 18 and not a party to the within action. My business address is 200 N. Main St., Rm. 920 C.H.E., and Los Angeles, California 90012.

On May 30, 2018, I served the foregoing document described as **RESPONDENT CITY OF LOS ANGELES'S OPPOSITION TO MOTION TO COMPEL FURTHER RESPONSES TO RHF'S FORM INTERROGATORIES,** on the interested parties in this action by placing a **[X]** true copy [ ] original copy thereof enclosed in a sealed envelope addressed as follows:

Timothy D. Reuben, Esq.
REUBEN RAUCHER & BLUM
12400 Wilshire Blvd., Ste. 800
Los Angeles, CA 90025

Michael G. Colantuono, Esq.
Holly O. Whatley, Esq.
Pamela K. Graham, Esq.
Colantuono, Highsmith & Whatley, PC
790 East Colorado Blvd., Ste. 850
Pasadena, CA 91101

Stephen Raucher, Esq.
Email address: sraucher@rrbattorneys.com

Pamela K. Graham, Esq.
Email address: pgraham@chwlaw.us

[X] MAIL - I caused such envelope to be deposited in the United States mail at Los Angeles, California, with first class postage thereon fully prepaid. I am readily familiar with the business practice for collection and processing of correspondence for mailing. Under that practice, it is deposited with the United States Postal Service on that same day, at Los Angeles, California, in the ordinary course of business. I caused such envelope to be deposited in the mail at Los Angeles, California, with first class postage thereon fully prepaid.

[x] E-MAIL TRANSMISSION - I caused such document to be transmitted in a PDF format to the offices of the addressee via e-mail on the date specified above.

[ ] Federal - I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

[x] State - I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 30, 2018, at Los Angeles, California.

Cynthia Marchena